

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

KENNETH JOHNSON and  
JACQUELYN JOHNSON,

Plaintiffs,

v.

THE LOWNDES COUNTY BOARD OF  
EDUCATION; FRED WETHERINGTON,  
individually and in his official capacity as  
the Chairman of Lowndes County Board  
of Education; MIKE DAVIS, individually  
and in his official capacity as Board  
member; FRED DAVIS, individually and  
and in his official capacity as Board  
member; BRIAN BROWNING,  
individually and in his official capacity as  
Board member; JASON WISENBAKER,  
individually and in his official capacity  
as Board member; DAVE CLARK,  
Individually and in his official capacity as  
Board member; PHILIP POOLE,  
individually and in his official capacity  
as Board member; WES TAYLOR,  
individually and in his official capacity  
as Superintendent of the Lowndes County  
Board of Education; and JAY FLOYD,  
Individually and in his official capacity as  
Principal of Lowndes High School,

Defendants.

CIVIL ACTION  
NO. 7:14-cv-158(HL)

Removal from Superior Court  
of Lowndes County  
Civil Action No. 2014CV1592

**NOTICE OF REMOVAL**

COME NOW defendants the Lowndes County Board of Education, Fred Wetherington, Mike Davis, Fred Davis, Brian Browning, Jason Wisenbaker, Dave Clark, Philip Poole, Wes Taylor, and Jay Floyd, by and through the undersigned counsel, and pursuant to 28 U.S.C. §§ 1367, 1441 and 1446 hereby remove this action from the Superior Court of Lowndes County to this Court. In support of removal, defendants show the following:

1.

Plaintiffs filed this action on July 28, 2014, in the Superior Court of Lowndes County (the "state court action"). The state court action was designated Civil Action File No. 2014-CV-1592.

2.

Defendants acknowledged receipt and service of plaintiffs' complaint in the state court action on September 10, 2014.

3.

All process, pleadings and orders acknowledged as served upon defendants are attached hereto as Exhibit "A."

4.

This Notice of Removal is filed within thirty (30) days of service of the summons and complaint on defendants.

5.

A companion complaint was previously filed by the same plaintiffs in the Superior Court of Lowndes County on May 13, 2014 styled Kenneth Johnson et al. v. The Lowndes County Board of Education et al., 2014-CV-997 (Lowndes Cnty. Sup. Ct. filed May 13, 2014) (the "first state court action").

6.

The first state court action asserts claims under the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964, as well as state law claims.

7.

The first state court action is being removed to this Court by the named defendants therein pursuant to 28 U.S.C. § 1441 contemporaneously with the filing of the instant notice of removal.

8.

This action may be removed to this Court by defendants pursuant to 28 U.S.C. §§ 1441 and 1367(a) in that this Court has supplemental jurisdiction over

plaintiffs' claims herein because they arise out of the same facts as the federal claims in the first state court action such that they form part of the same case or controversy and that plaintiffs are seeking the same damages claiming that the death of their minor child occurred as a result of the wrongful acts alleged in both law suits.

9.

Pursuant to 28 U.S.C. § 90(b)(6), the United States District Court for the Middle District of Georgia, Valdosta Division, is the district court having jurisdiction over the geographical area where the state court action is pending. Pursuant to 28 U.S.C. § 1446(a), defendants are entitled to remove this action from the Superior Court of Lowndes County to this Court.

10.

Defendants have provided written notice of the filing of this Notice of Removal to plaintiffs and the Clerk of Court for the Superior Court of Lowndes County, a copy of which is attached hereto as Exhibit "B."

11.

Based on the foregoing, defendants respectfully request that this Court allow removal and assert jurisdiction over the state court action.

[signatures on next page]

**FREEMAN MATHIS & GARY, LLP**

*/s/ Wayne S. Melnick*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically submitted the foregoing NOTICE OF REMOVAL to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and mailed by United States Postal Service, first-class, postage prepaid, a paper copy of the same document to parties and counsel of record who are non-CM/ECF participants, as follows:

Chevene B. King, Jr.  
The C.B. King Law Firm  
PO Drawer 3468  
Albany, Georgia 31706

This 10th day of October, 2014.

/s/ Wayne S. Melnick  
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